PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: KRC Mundelein 874, Inc.
DOCKET NO.: 04-00372.001-C-1 and 05-00718.001-C-3
PARCEL NO.: 11-31-403-002

The parties of record before the Property Tax Appeal Board are KRC Mundelein 874, Inc., the appellant, by attorney Robert M. Sarnoff of Sarnoff & Baccash, in Chicago; the Lake County Board of Review, by Assistant State's Attorney Karen Fox; and intervenors School Dist. No. 120 and School Dist. No. 76, by attorney Alan M. Mullins of Scariano, Himes & Petrarca, in Chicago Heights.

The subject property consists of a 325,829 square foot parcel improved with a 19 year-old, one-story masonry retail building with an auto repair facility that contains 89,692 square feet of building area. The majority of the building (87,547 square feet) is currently leased by Burlington Coat Factory, with 2,145 square feet leased by Car-X, an auto repair business. The subject property is located in Mundelein, Libertyville Township, Lake County, Illinois.

Through its attorney, the appellant appeared before the Property Tax Appeal Board claiming the subject's market value was not accurately reflected in its assessment. At the hearing, the Property Tax Appeal Board consolidated the appellant's appeals under Docket Nos. 04-00372.001-C-1 and 05-00718.001-C-3, as the evidence submitted by the parties was the same for both appeals. In support of the overvaluation argument, the appellant submitted an appraisal of the subject property with an effective date of January 1, 2004. While two appraisers prepared the report, one of them was present at the hearing to provide testimony and be cross-examined, and testified that all three traditional approaches in estimating a value for the subject of $3,550,000.

Under the cost approach, the appraisers examined four land sales to determine a value for the subject site. The comparables range

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds *a reduction* in the assessment of the property as established by the **Lake** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO.	PROPERTY NO.	LAND	IMPR.	TOTAL
04-00372.001-C-1	11-31-403-002	$665,373	$510,032	$1,175,405
05-00718.002-C-3	11-31-403-002	$665,373	$510,032	$1,175,405

Subject only to the State multiplier as applicable.

in size from 129,809 to 386,377 square feet of land area and sold between April 2001 and December 2004 for prices ranging from $2.71 to $9.24 per square foot of land area. The comparables were adjusted for property rights conveyed, financing, conditions of sale, market conditions, size, zoning, location and street frontage. Based on this analysis, the appraisers estimated the value of the subject site, if vacant, at $6.25 per square foot, or $2,035,000, rounded.

In valuing the subject improvements, the appraisers used the Marshall and Swift Computerized Cost Estimate Program to generate a replacement cost for a Class C, Discount Warehouse Store Building of $3,042,353. In calculating depreciation, the appraisers used the age-life method. The subject was determined to have an economic life of 45 years, an actual age of 19 years and an effective age of 25 years, resulting in a remaining economic life of 20 years. The appraisers estimated physical deterioration of the improvements was 40% and that functional obsolescence of 10% was warranted to account for super-adequate retail space which cannot be easily subdivided. The building's replacement cost of $3,042,353 was then depreciated by 50%, resulting in a depreciated value of the building of $1,521,176. To this figure, the appraisers added depreciated site improvements of $100,000 and the site value of $2,035,000 to arrive at a value for the subject by the cost approach of $3,655,000.

Under the income approach, the appraisers examined four comparable rental properties located in the subject's general neighborhood. The comparables contain from 20,000 to 117,367 square feet of building area and are leased at $6.00 or $8.00 per square foot. The appraisers noted 87,547 square feet of the subject improvements are leased by Burlington Coat Factory at $5.50 per square foot. The remaining 2,145 square feet are leased by Car-X at $15.79 per square foot. The appraisers used the Burlington Coat Factory lease rate of $5.50 per square foot for the entire facility in their income approach, since the Car-X portion of the building is such a small area compared to the portion used by Burlington.

In considering vacancy and collection loss, the appraisers noted that the subject had originally been a Venture store, but was acquired by the appellant in 1998 when Venture went bankrupt. The subject was then leased to K-Mart, which also filed for bankruptcy and vacated its lease. The appraiser contended in his testimony that older "big box" stores like the subject are increasingly harder to lease and that because of the subject's history, a vacancy and collection loss rate of 20% is justified. Using the total building area of 89,692 square feet and a rental rate of $5.50, the appraisers determined the subject's potential gross income to be $493,306, less the 20% vacancy and collection loss of $98,661, resulting in an effective gross income of $394,645. The appraiser then deducted 10% or $39,465 of the effective gross income for expenses, leaving net operating income of $355,180.

The appraiser utilized the band of investment technique to derive a capitalization rate. He determined a 70% mortgage for 25 years at 7.5% interest, with a five year balloon and a mortgage constant of .0887, was appropriate. An annual equity return of 10% was deemed sufficient for the remaining 30% down payment, assuming a holding period of seven years. Based on this formula, the appraiser estimated the mortgage portion of the capitalization rate to be .0621 and the equity portion to be .0300, resulting in a capitalization rate by the band of investment technique of 9.25%, rounded. The appraiser also consulted the Korpacz Real Estate Investment Summary and the Real Estate Research Corporation Fourth Quarter 2003 Report, concluding that retail properties were typically capitalized at rates ranging from 7.00% to 10.0%. After incorporating the band of investment technique rate of 9.25% and the above published sources, the appraiser determined an overall capitalization rate for the subject of 10% was appropriate. The appraiser applied this rate to the subject's net operating income of $355,180 in estimating a value for the subject by the income approach of $3,550,000.

Under the sales comparison approach, the appraisers examined four comparable properties located in Gurnee, Fox Lake and Waukegan, Illinois. The comparables are situated on sites ranging from 309,750 to 801,940 square feet and are improved with one-story masonry neighborhood shopping centers that are comprised of one, two or four buildings. The comparables have effective ages of 15 or 25 years, range in total building area from 82,230 to 126,865 square feet and have land-to-building ratios of 2.72:1 to 6.32:1. The comparables sold between July 2001 and May 2004 for prices ranging from $2,425,000 to $5,428,222 or from $20.21 to $42.79 per square foot of building area. The appraisers adjusted the comparables for market conditions, size, land-to-building ratio and effective age. The appraisers concluded that, based on the subject's age and overall condition, a unit price for the subject of $38.00 per square foot was justified. Based on this analysis, the appraisers estimated a value for the subject by the sales comparison approach of $3,410,000, rounded.

In reconciliation, the appraisers placed primary emphasis on the income approach, with support from the sales comparison approach, in estimating a final value for the subject of $3,550,000.

During the hearing, the appellant's attorney called Robert Ross, who prepared an appraisal for the Lake County Board of Review in support of the subject's assessment, as an adverse witness, pursuant to Section 1910.90(j) of the Official Rules of the Property Tax Appeal Board. The appellant's attorney questioned Ross regarding his appraisal where he referred to the subject as having an exposed metal panel ceiling. The witness responded that the subject actually had a finished ceiling. The witness acknowledged he had used a calculator method from the Marshall Valuation Service in his cost approach to value the subject as a warehouse discount store, but that he should have classified the subject as a discount store. At this point, the appellant submitted into the record his Exhibit 2, which showed a base cost from the calculator method pages of the Marshall Valuation Service for a "good" quality warehouse discount store of $45.58 per square foot of building area. An "average" quality warehouse discount store was indicated to have a base cost of $34.59 per square foot of building area from the same page and table. The attorney then proceeded to point out a number of places in Ross's appraisal where he referred to the subject as being of average quality. Ross acknowledged that while characterizing the subject as being of average quality, he actually had used the base price of $45.58 for a good quality structure in his cost approach calculations. The witness agreed he considered the subject to have suffered 50% depreciation; the same figure arrived at by the appellant's appraisers. The appellant also submitted a comparison of the good and average quality base costs from the Marshall Valuation Service calculator cost pages as the basis for calculating a depreciated replacement cost for the subject. The comparison demonstrated that using the good quality grade base cost of $45.58 per square foot, as used by Ross in his appraisal, resulted in a depreciated value for the subject of $4,570,000, while using the average quality grade base cost of $34.59 per square foot resulted in a depreciated value for the subject of $4,000,000.

Moving to the income approach in Ross's appraisal, the appellant's counsel called attention to where the appraisal stated "We were not provided any lease or tenant information." Ross acknowledged this was an error and that he had included the subject's rent roll in his report. Ross further acknowledged his lease comparables 4 and 5 were former K-Mart stores that were 100% vacant. The appellant asked Ross if he was aware the subject had formerly been a Venture property, that Venture went bankrupt, that the subject was then leased by K-Mart and that K-Mart also went bankrupt; Ross agreed he was aware of these bankruptcies.

The appellant's attorney then asked Ross if he was aware that two of the comparables used in his sales comparison approach were

100% vacant at the time of sale and that one comparable was 18% vacant. Ross acknowledged the vacancies. Ross also admitted his comparable sale 4 was a 1031 exchange. Under questioning by the appellant's attorney, Ross explained that a 1031 exchange is utilized when a prospective buyer has a limited time to purchase real estate due to income tax implications. The witness acknowledged the motivations of buyers and sellers in 1031 exchanges "may have to be analyzed." Ross further admitted that he included no analysis of the 1031 exchange involving comparable sale 4 in his appraisal. Finally, the appellant asked Ross if he was aware that his comparable sale 1 involved a total teardown of the existing K-Mart building and erection of a new Wal-Mart subsequent to the sale. Ross said he knew Walmart "went in there," but didn't know whether any of the existing building was used.

The appellant's counsel then called appraiser Gary Skish, co-author of the appellant's appraisal report, to testify. Skish testified that a number of companies that typically used "big box" stores, those with 60,000 or more square feet, have gone out of business and that the demand for such buildings has dropped. These structures normally have low frontage-to-depth ratios, meaning they tend to have smaller frontages than depths, or very close to a one-to-one ratio. Skish opined such buildings are not suitable for multi-tenant uses because they are so deep relative to their widths. This fact limits big box stores to a single tenant use, for the most part. Skish agreed that a number of former users of big box stores have gone out of business, that Burlington Coat Factory is one of the few companies interested in leasing former big box stores and that "they usually aren't competing with anybody else for the spaces that they've taken." Skish testified that Walmart and Target stores have moved on from their older big box stores of 10 years ago and have built new super stores to encompass grocery sales that are twice the size of the older buildings. This has left a glut of older stores, such that demand for them in the rental market has decreased, resulting in lower rentals and more vacancies. Skish opined that buildings like the subject are thus not investment grade properties anymore.

The appellant's counsel then directed Skish to a photograph in the appraisal that depicts the interior of the subject building. After consulting the photo, Skish testified the subject's ceiling was exposed metal panel, rather than a finished ceiling as stated by Ross. Skish then testified that the appellant, KRC – Kimco Realty Corp. – acquired 88 former Venture stores in six or seven states when Venture closed them. The stores were bought on a sale-leaseback basis by KRC, which didn't last long and "Venture was upside down and out of business". KRC then placed K-Mart "Big K" brand stores into some of the former Venture stores. K-

Mart eventually shut down all the Big K stores and went into bankruptcy twice. During the second bankruptcy, K-Mart rejected the lease on the subject property and vacated the building. Then Burlington Coat Factory leased the subject property. Skish acknowledged the current lease between KRC and Burlington includes a tenant cancellation clause.

Skish was then questioned by the appellant's attorney regarding his cost approach. Skish agreed that the subject's land value was $6.25 per square foot, the same as determined in Ross's appraisal. Regarding the subject's improvements, Skish determined a replacement cost new of $33.92 per square foot, utilizing the Marshall Valuation Service Computerized Cost Estimate Program. This is an alternative to the manual or calculator cost estimator method used by Ross. Skish agreed the $33.92 per square foot cost he used was substantially the same as the $34.59 per square foot cost Ross should have used for a Class C property. Skish agreed that he found, like Ross, that 50% total depreciation was appropriate for the subject improvements. Skish acknowledged the main difference between his cost approach and Ross's cost approach was this base cost, where Ross actually used $45.58 per square foot for a good quality structure, rather than an average quality building, for which $34.59 per square foot would have been appropriate.

Regarding his sales comparison approach, Skish acknowledged he used four comparable sales that ranged in price from $20.21 to $42.79 per square foot. The witness testified he selected $38.00 per square foot as an appropriate basis to value the subject by the sales comparison approach at $3,410,000.

Skish was then directed to his income approach, on which he relied most heavily in his opinion of value for the subject. Skish's rental comparables ranged from $6.00 to $8.00 per square foot of building area. However, Skish used $5.50 per square foot for the subject, based on the subject's actual lease terms. He testified regarding Burlington Coat Factory's cancellation clause, with no penalty, which allows them to cancel the lease with one year's notice. Skish also pointed out that rent payments from Burlington to KRC did not commence until six months after the rent commencement date, resulting in an effective initial lease term of just 54 months, or four and one-half years. Skish opined these terms were very favorable to Burlington and reflect "the lack of competitors vying for the lease." Skish agreed this situation removes the subject from the realm of a net lease investment and that it is not investment grade without a long-term lease. Skish was then questioned regarding his 20% vacancy estimate for the subject. The witness testified vacancy rate surveys that are commonly consulted are skewed by shopping centers, which are frequently great retail properties with new leases and don't reflect big box properties like the subject that are not investment grade. Skish observed that investment grade leases typically involve 10 or 15-year initial terms. For these reasons, Skish testified a higher than normal vacancy rate for the subject is justified. He opined that, based on low demand for buildings the size of the subject, if Burlington were to leave, the subject improvements would likely be torn down and then redeveloped into a multi-tenant shopping center.

The appellant's counsel then questioned Skish about Ross's appraisal. Skish acknowledged two of the rental comparables used by Ross were vacant as of the effective date of Ross's appraisal. Skish opined these vacancies underscore the point that buildings the size of the subject often sit empty. Skish also agreed several of the comparables used in Ross's sales comparison approach were also vacant at the time of sale, demonstrating that they can be completely obsolete. Skish then addressed his own choice of a capitalization rate of 10%, as opposed to Ross's 9.5% rate. Skish testified "the greater risk of a property's revenue stream, you know, not coming to fruition as it should would increase the return expectancy on an investor because of its risk." Skish was then directed to Ross's appraisal where the latter utilized the Korpacz Real Estate Investor Survey, national net lease market, third quarter, 2003. Skish testified this source examines the national net lease market for investment grade properties of many types with much longer leases than the 4 ½ year lease term of the subject property. Skish reiterated that the conditions of the subject's lease between KRC and Burlington indicate it is not investment grade because of its relatively short term and cancellation clause with no penalty. Skish testified he examined the Korpacz survey as well, but found the Real Estate Research Corporation (RERC) survey more useful because it ranks properties in first, second and third tiers, recognizing some lesser quality properties, shorter leases and less credit-worthy tenants. For these reasons, Skish opined the subject would fall in the second or third tier of the RERC survey, justifying his selection of a 10% capitalization rate, because of the subject's limited future use and unreliable income stream. Finally, Skish testified his estimate of value for the subject of $3,550,000, based primarily on the income approach, would be the same for the 2004 and 2005 assessment years.

Under cross-examination, Lake County Assistant State's Attorney Karen Fox first questioned Skish regarding his credentials. Skish acknowledged he has completed all work necessary to become a certified general appraiser in Illinois, but has not taken the test yet. Fox then asked Skish if he had included any market data on big box stores to support his testimony that a lower value for the subject was justified because of the impact of such properties. Skish agreed he had not. Skish then acknowledged that KRC had purchased a number of big box stores, but that KRC was a landlord for many former K-Mart Big-K stores, which closed when K-Mart went bankrupt. Fox then asked Skish if his actual lease rate of $5.50 per square foot for the subject included the Car-X lease. Skish admitted he did not include the Car-X lease. Fox asked the witness if the Burlington Coat Factory lease was considered a long-term lease, to which he responded it was not, but he agreed that KRC could rely on the Burlington income stream for at least 54 months. Regarding the cost approach in Skish's appraisal, Fox asked the witness if the adjustments made for various factors in the report. Skish replied that when using the Marshall Valuation Service computer method, adjustments are automatically made in the software for location, based on the subject's zip code. Fox then questioned Skish regarding his classification of the subject as a warehouse discount store in the Marshall Valuation Service cost system. Skish responded that ordinary discount stores have a higher level of interior finish, such as suspended ceilings.

Fox then questioned Skish regarding his 20% vacancy rate in the income approach. Skish acknowledged he provided no specific data in his appraisal to support the vacancy rate. The witness also acknowledged that his 10% capitalization rate was similar to Ross's rate of 9.5%. Skish then agreed that his sales comparison approach comparable 4 was only partially occupied by an Ace Hardware store.

Under redirect examination, the appellant's attorney asked Skish to consult a photograph of the subject. Skish reiterated his earlier testimony regarding the difficulty of classifying a building like the subject as either purely a warehouse discount store or just a discount store. He stated he still considered the subject as a warehouse discount store. Skish also acknowledged he assisted another appraiser in compiling the appellant's appraisal, that he accompanied the other appraiser on her inspection of the subject and that he assisted in reviewing comparables and in preparing the income approach. Based on this evidence and testimony, the appellant requested the subject's total assessment be reduced to $1,399,498.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $1,488,467 was disclosed. The subject has an estimated market value of $4,495,521, as reflected by its assessment and Lake County's 2004 and 2005 three-year median level of assessments of 33.11%.

In support of the subject's assessment, the board of review submitted an appraisal of the subject with an effective date of January 1, 2004. Appraiser Robert Ross, who is Assistant Chief County Assessment Officer and Director of Appraisals for the Lake

County Chief County Assessment Office, used all three approaches in estimating a value for the subject of $4,500,000.

Under the cost approach, Ross first examined three land sales to determine a value for the subject's land. The comparables were located in Volo and Vernon Hills, Lake County, Illinois, and range in size from 129,809 to 311,367 square feet of land area. The comparables sold between April 2001 and May 2004 for prices ranging from $1,200,000 to $2,321,950 or from $5.51 to $9.24 per square foot. The appraiser adjusted the comparables for factors such as location and physical characteristics. After adjustments, the land comparables had adjusted sales prices ranging from $6.06 to $6.47 per square foot. Based on this analysis, the appraiser estimated the subject's land value at $6.25 per square foot, or $2,035,000 rounded.

In valuing the subject improvements, Ross consulted the Marshall Valuation Service cost guide. The appraiser used a base square foot cost of $45.58, then incorporating various multipliers for number of stories, story height, floor area, current costs and local area in determining a final square foot cost of $51.12 per square foot. After applying this cost to the subject's 89,692 square feet, the appraiser determined a base building cost of $4,584,758. Ross then added $250,000 for site improvements and indirect costs of 5%, or $241,738, for such items as developer overhead, property taxes, legal and insurance costs and other items, resulting in a replacement cost new of $5,076,496. He concluded the subject had suffered 50% depreciation, or $2,538,248, consisting entirely of incurable physical deterioration. Ross did not specify which method of depreciation calculation he utilized. After adding the subject's land value of $2,035,000 to the depreciated replacement cost of $2,538,248, the appraiser estimated the subject's value by the cost approach to be $4,570,000.

Under the income approach, upon which Ross placed most emphasis in his value conclusion, he examined five rental comparables located in Buffalo Grove, Lindenhurst, Fox Lake, Naperville and Wheeling, Illinois. The comparables range in size from 88,382 to 117,367 square feet. Comparables 1, 2 and 3 were described as shopping centers. Comparables 4 and 5 were described as vacated former K-Mart stores that had asking rents of $7.00 and $9.00 per square foot, respectively. Based on these comparables, Ross incorporated the Car-X portion (2,196 square feet) of the subject's lease at $15.79 per square foot, with the Burlington Coat Factory portion (87,547 square feet) at $5.50 per square foot in determining a contract rent of $5.75 per square foot. Ross acknowledged the contract rent was slightly below the range of his rental comparables. The appraiser consulted the Chicago Retail Market View for the Third Quarter of 2003, noting that the overall vacancy rate in the far north suburbs of the Chicago area was 7.4%. Ross determined an 8% vacancy rate was appropriate for the subject, to which he added a 1% collection loss rate, for a total vacancy and collection loss rate of 9%. The appraiser concluded a management fee of 5%, or $0.26 per square foot, was appropriate for the subject. He consulted the Korpacz Real Estate Investor Survey, third quarter 2003, finding reserves for replacement ranged from $0.10 to $0.30 per square foot. From this, Ross estimated a stabilized reserve for replacement of $0.20 per square foot. He consulted the same source to determine a capitalization rate, finding overall rates ranged from 7.00% to 10.00%, from which he derived a capitalization rate for the subject of 9.50%.

Ross's market rent for the subject of $5.75 per square foot, applied to the subject's 89,692 square feet, resulted in a potential gross income of $515,729. After subtracting the 9% vacancy and collection loss rate, he calculated effective gross income at $469,313. He then subtracted $23,466 for management fees and $17,928 for reserves for replacement, resulting in net operating income of $427,909. Capitalized at 9.5%, this net income yielded an estimated value for the subject by the income approach of $4,500,000.

Under the sales comparison approach, Ross examined five comparables that were located in DuPage County, Lake County and McHenry County. The comparables range in size from 40,253 to 115,791 square feet and sold between December 2002 and December 2004 for prices ranging from $1,325,000 to $6,900,000 or from $32.92 to $59.59 per square foot. The appraiser adjusted the comparables for such factors as location, size, land-to-building ratio, tenant mix, age/condition and construction quality, resulting in adjusted sales prices ranging from $47.79 to $53.63 per square foot. Comparable 1 is a former K-Mart store that was vacated and purchased by Walmart and completely renovated. The remaining comparables were retail centers or retail/commercial buildings. Based on this analysis, the appraiser determined a value for the subject by the sales comparison approach of $51.00 per square foot, or $4,570,000.

In reconciliation, Ross placed most weight on the income approach, acknowledging the subject's contract rent is below market rent levels. He determined the sales comparison approach supported the income approach, with less reliability from the cost approach, due to the subjective nature of estimating depreciation. For these reasons, the appraiser estimated a final value for the subject of $4,500,000.

During the hearing, Lake County Assistant State's Attorney Karen Fox called Ross to testify regarding his appraisal report. Ross testified he has been an appraiser for 25 years and holds the Senior Property Appraiser designation from the American Society of Appraisers. Ross was accepted as an expert appraisal witness.

Ross testified the subject is located near the Vernon Hills Shopping Center in a retail neighborhood and that at the time of his inspection in February 2006, the shopping center was approximately 100% occupied. He testified the subject's neighborhood is "actually one of the major retail areas of Lake County within 1 mile of the subject property. . ." Regarding the subject improvements, Ross opined the highest and best use of the subject as improved was for retail development.

Regarding his cost approach, Ross discussed his land valuation and the various factors he applied to the base building cost. Ross acknowledged some errors in his report, including that the subject is an average warehouse discount store, but that "It's listed as good on the – the sheet that's been supplied. So it's listed as good warehouse." Ross testified the cost approach was given secondary emphasis and that the income approach received primary emphasis.

Regarding his income approach, Ross testified he examined five rental properties that ranged from $6.00 to $9.00 per square foot. He acknowledged another error in his report, in the income approach, where the report stated he was not provided any lease or tenant information. The witness testified that even though the subject's contract rent of $5.75 per square foot was below the range of his rental comparables, he still considered the subject an investment grade property. Ross then referred to his report where he cited CB Richard Ellis, which found that overall vacancy rates in the third quarter of 2003 for the far north suburban area was 7.4%. Ross acknowledged the subject had experienced difficulties, but that his allowance of 9% for vacancy and collection loss for the subject was appropriate, which was 100% leased on its assessment date of January 1, 2004. Ross then testified regarding his capitalization technique. He consulted the Korpacz Investor Survey of the national net lease market, which showed a range of capitalization rates from 7.00% to 10.00%, with an average of 8.33% to 9.00%. The witness stated his 9.5% rate "is a very, very conservative rate of a property of this type that is leased below market terms." Ross further testified his contract rent rate of $5.75 per square foot for the subject properly accounted for the space used by Car-X.

Regarding his sales comparison approach, Ross acknowledged his comparable sale 1 was a vacant former K-Mart store, that his comparable 2 was 85% occupied and that comparable 4 was a 1031 exchange transaction. Ross testified that this sale set the upper limit of his comparables' range of values and that the market value of the subject falls within his adjusted range of $47.79 to $53.63 per square foot. Finally, Ross reiterated that his final value estimate for the subject of $4,500,000 was appropriate, given the subject's below market lease rate of $5.75 per square foot and notwithstanding the problems some big box stores experience in staying continuously leased.

Under cross-examination, the appellant's attorney questioned Ross regarding the subject's $5.75 per square foot lease rate as found in the latter's appraisal report. Ross reiterated that the subject's "contract rent levels are below the comparable rent range, which is $6.00 to $9.00." The witness was asked if he agreed that when a property is purchased for its income and cash flow, an investor would be interested in the rent, the lease term and whether the tenant had the opportunity to get out of the lease; Ross acknowledged this to be true. Ross also agreed that an investor would be interested in option terms, including the option to renew the lease, or to get out of the lease with no penalty.

The appellant's attorney then questioned Ross about the rent rates of the comparables which Ross used in his appraisal. Ross acknowledged his first three comparables were shopping centers with multiple tenants and not big box stores. Ross responded that he also used two big box comparables. The attorney then asked if both of Ross's big box comparables were 100% vacant, to which Ross agreed. The attorney asked the witness if he had done any studies comparing the vacancy rate of big box stores as opposed to shopping centers. Ross could not recall if he had done any recent analysis comparing vacancy rates of big box stores versus shopping centers.

Under redirect examination of the witness, Fox asked Ross if the appellant's appraisal used any of the same rental comparables as Ross had used. The witness responded that Skish had used three comparables in his income approach that were the same properties as Ross's comparables 1, 2 and 3. Fox further asked Ross if he combined the Burlington Coat Factory rent of $5.50 per square foot with the Car-X rent of $15.79 in arriving at a combined rent level for the subject of $5.75 per square foot, to which Ross agreed.

In his closing summary, the appellant's attorney argued Ross's appraisal was less credible because of the discrepancies regarding the cost approach, where Ross used the base cost for a good quality building, while characterizing the subject as average quality in several instances in his report. The attorney also pointed out that Ross erred in characterizing the subject as having a finished ceiling, and that his income approach was incorrect where it stated Ross had not been given rent and expense data. Finally, the appellant' attorney argued the appellant's appraisal was correct in using a 20% vacancy rate in the income approach because the subject had endured several bankruptcies and that Burlington Coat Factory could vacate the lease upon one year's notice, with no penalty.

In the board of review's closing summary, Assistant State's Attorney Fox argued the appellant's appraiser failed to supply market data to support his testimony that big box stores have higher vacancy rates. Fox also argued that Ross used a more appropriate contract rent for the subject of $5.75 per square foot by including the Car-X lease.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject property's assessment is warranted. The appellant argued the subject's market value is not accurately reflected in its assessment. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2nd 1256 (2d Dist. 2000). The Board finds the appellant has overcome this burden.

The Board finds both parties submitted appraisals which utilized all three approaches to value and that both appraisers were present at the hearing to provide testimony and be cross-examined regarding their respective reports. Regarding the cost approach, specifically the subject's site value, the Board finds both appraisers estimated the subject site had a value of $6.25 per square foot, or $2,035,000 rounded. In estimating a value for the subject improvements, both appraisers also estimated the subject suffered 50% total depreciation. However, Skish used the Marshall and Swift Computerized Cost Estimate Program, based on his determination that the subject building was a Class C Discount Warehouse Store building, with a base cost of $33.92 per square foot while Ross used the Marshall & Swift Calculator method, with a base square foot cost of $45.58 per square foot, which he claimed was appropriate for a discount store, rather than a warehouse discount store.

During cross-examination by the appellant's attorney, Ross acknowledged that he referred to the subject as an average quality structure numerous times in his appraisal, and yet, the appellant's attorney demonstrated with his Exhibit 2, a photocopy of a page from the Marshall and Swift Calculator Method, that a $45.58 per square foot base cost is actually for a "good" quality warehouse discount store. Ross's appraisal appears to have used a good quality base cost of $45.58 per square foot for a warehouse discount store, rather than an average quality base cost, which was demonstrated from the appellant's Exhibit 2 to be $34.59 per square foot, similar to the computerized cost of $33.92 per square foot used by Skish. Ross described the subject as an average quality building in the text of his appraisal, but used a base cost for a good quality building in his calculation of the subject's replacement cost. Thus, the square foot base cost was not appropriate where Ross acknowledged the subject was of only average quality.

Furthermore, the Board finds Ross also testified the subject has a suspended ceiling, but photographs of the subject submitted by the appellant indicated the subject has an exposed metal ceiling, which is more appropriate to an average quality building, according to Skish's testimony. In this regard, the appellant's attorney demonstrated from the aforementioned Exhibit 2 that the base cost for an average quality warehouse discount store building is $34.59 per square foot, similar to the Marshall and Swift Computerized Cost Estimate Program base cost of $33.92 per square foot that was used by Skish.

Additionally, the Board finds Ross's testimony regarding the subject's ceiling conflicts with photographs of the subject submitted by the appellant. Because of these factors, the Board gave less weight to Ross's cost approach.

Regarding the income approach, which received primary emphasis by both parties' appraisers, the Board finds the principal differences in the parties' appraisals involved the vacancy rates and capitalization rates. Skish determined that a vacancy rate of 20% was appropriate to reflect the subject's troubled history involving bankruptcies by Venture and K-Mart, and the difficulty of leasing former big box stores. While Skish submitted no market data to demonstrate such a vacancy rate, he testified many big box stores were difficult to rent or sell, due to their frontage-to-depth ratios which make them awkward to subdivide for multiple-tenant use. Skish testified vacancy rate surveys that are commonly consulted are skewed by shopping centers, which are frequently great retail properties with new leases and don't reflect big box properties like the subject that are not investment grade. Ross used a vacancy and collection rate of 9%, relying on a study of vacancies for all retail properties in the far north suburbs of the Chicago area for the fourth quarter of 2003. Skish testified long term leases of 10 or 15 years were typical for investment grade properties. Skish further testified that the subject's 54-month lease with its option for the tenant to vacate the lease with no penalty was also atypical of investment grade properties.

Under questioning by the appellant's attorney, Ross acknowledged his vacancy rate was based on all retail properties, and did not specifically address big box stores. Ross also acknowledged he had done no recent study of big box vacancy rates. Ross further agreed his rental comparables 4 and 5 were vacant former K-Mart stores. The Board notes Ross's appraisal indicates these comparables had asking rents of $7.00 and $9.00 per square foot, rather than actual contract rents. Since both these former K-Mart properties were not rented at the asking rents, the Board finds they do not reflect the rental market as well as actual rents for buildings that are leased. This factor further supports the subject's actual rent. The Board further notes Ross acknowledged the subject's combined lease rate including the Burlington Coat Factory and Car-X leases of $5.75 per square foot falls below the range of his own rental comparables, which ranged from $6.00 to $9.00 per square foot. Nevertheless, Ross still maintained in his testimony that the subject was an investment grade property. The Board finds it curious that the subject was rented at a rate below the range of Ross's own comparables, if it is indeed an investment grade property. The Board notes both appraisers also used several of the same shopping center properties as rental comparables. The Board finds neither appraiser used rental rates of any former big box stores as comparables.

Regarding the capitalization rates used by both appraisers, the Board finds Ross used a 9.25% rate, while Skish used 10.0%. Ross's rate was partially based on the Korpacz Real Estate Investor Survey. Skish testified this source examines the national net lease market for investment grade properties of many types with much longer leases than the 54 month lease term of the subject property. Skish found the Real Estate Research Corporation (RERC) survey more useful because it ranks properties in first, second and third tiers, recognizing some lesser quality properties, with shorter leases and less credit-worthy tenants. The Board finds the RERC survey's inclusion of tiers to rank properties according to their attractiveness to investors is more reliable in determining a capitalization rate in this particular situation. Therefore, the Board finds Skish's rate of 10% was better supported.

In summary of the income approach analysis, the Board finds that Skish's rental comparables leased from $6.00 to $8.00 per square foot. Ross's rental comparables leased from $6.00 to $9.00 per square foot, but the upper limit of his range was established by an asking rent for a vacant building. The Board finds that while Skish used a rental rate for the subject of $5.50 per square foot and Ross used $5.75 per square foot, incorporating the Car-X portion of the lease, the subject nevertheless is still rented below all of the rental comparables in the record, indicating it is less attractive to investors. Neither appraiser used rental rates for big box stores as comparables, suggesting that leases of big box stores may be difficult to find. The subject's lease is for only 54 months and includes an option for Burlington to vacate the lease with no penalty. The Board finds these factors suggest the subject is not a typical investment grade property and that Skish's income approach is better supported.

Regarding the sales comparison approach, the Board finds Ross's appraisal included two comparables that were 100% vacant at the time of sale and one comparable that was 18% vacant. Ross also included a 1031 exchange transaction as his comparable 4, which he acknowledged is utilized when a prospective buyer has a limited time to purchase real estate due to tax implications on the property. Ross admitted he provided no analysis of the motivations of buyers and sellers in 1031 exchanges. The Board also notes Ross's comparable sale 1, a former K-Mart store, was torn down subsequent to the sale and a new super Walmart erected in its place. These factors suggest big box stores like the subject have limited utility. For these reasons, the Board gave less weight to Ross's estimate of value for the subject by the sales comparison approach.

In conclusion, the Board finds that Skish's appraisal and testimony were not found to contain errors and, on balance, were more credible than Ross's appraisal and testimony. Ross acknowledged several errors in his report and gave conflicting testimony, thereby weakening his credibility. Based on the foregoing analysis, the Board finds the subject had a market value for 2004 and 2005 of $3,550,000. Therefore, the Board finds the appellant has proven overvaluation by a preponderance of the evidence and the subject's assessment is incorrect and a reduction is warranted. Since market value has been established, the three-year median level of assessments for Lake County of 33.11% for 2004 and 33.11% for 2005 shall apply.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Chairman

Member

Member

Member

Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: January 25, 2008

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.